

LEWIS  
ANDROCA  
LLP

LAWYERS

E-Filed on March 20, 2007

1 3993 Howard Hughes Parkway, Suite 600  
 2 Las Vegas, NV 89169-5996  
 3 Facsimile (702) 949-8321  
 4 Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199  
 Email: sfreeman@lrlaw.com  
 Rob Charles NV State Bar No. 006593  
 Email: rcharles@lrlaw.com

5 Attorneys for USACM Liquidating Trust

6 **UNITED STATES BANKRUPTCY COURT**  
 7 **DISTRICT OF NEVADA**

8 In re:

9 USA COMMERCIAL MORTGAGE COMPANY,  
 10 USA CAPITAL REALTY ADVISORS, LLC,  
 11 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 12 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 13 USA SECURITIES, LLC,

14 Debtors.

15 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR  
 Case No. BK-S-06-10726-LBR  
 Case No. BK-S-06-10727-LBR  
 Case No. BK-S-06-10728-LBR  
 Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**SECOND OMNIBUS OBJECTION OF THE  
 USACM LIQUIDATING TRUST TO CLAIMS  
 ASSERTING SECURED STATUS**

Hearing Date: April 26. 2007  
 Hearing Time: 9:30 a.m.

19 The USACM Liquidating Trust (the “USACM Trust”) hereby files its Second  
 20 Omnibus Objection to Claims Asserting Secured Status (“Objection”) and moves this  
 21 Court, pursuant to § 502 of title 11 of the United States Code (the “Bankruptcy Code”) and  
 22 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an  
 23 order disallowing approximately 1,600 alleged Secured Claims asserting Claims against  
 24 USA Commercial Mortgage Company (“USACM”) that aggregate over \$296 million. The  
 25 USACM Trust is not, by this filing, objecting at this time to any of the claims as unsecured

LEWIS  
ANDROCA  
LLP

LAWYERS

1 claims, but reserves the right to do so. This Objection is supported by the Court's record  
2 and explained in the following Memorandum.

3 **I. JURISDICTION**

4 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
5 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
6 proceeding under 28 U.S.C. § 157(b)(2)(B).

7 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
8 and Bankruptcy Rule 3007.

9 **II. BACKGROUND**

10 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
11 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital  
12 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC  
13 ("FTDF" and together with DTDF, the "Funds") (collectively the "Debtors"), filed  
14 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors  
15 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections  
16 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was  
17 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
18 ("Mesirow"), who serves as the Chief Restructuring Officer.

19 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
20 business of underwriting, originating, brokering, funding and servicing commercial loans  
21 primarily secured by real estate, both on behalf of investors and for its own account.

22 3. This business included the solicitation of individual investors to purchase  
23 fractional interest in loans that USACM originated and then serviced. These investors,  
24 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
25 USACM's bankruptcy case and in this Objection.

LEWIS

AND

ROCA

LLP

---

L A W Y E R S

1       4. Although USACM serviced and sometimes originated the loans in which the  
2 Direct Lenders invested, USACM was not a borrower on these loans.

3       5. On September 14, 2006, the Court entered its Order Setting Deadline to File  
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The  
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
6 the deadline ("Bar Date") for creditors to file proof of claims

7       6. On September 25, 2006, the Debtors served a copy of the Bar Date Order on  
8 their service lists [Docket No. 1358]. All Direct Lenders were served with a copy of the  
9 Bar Date order as well [Docket No. 1358].

10      7. On November 6, 2006, a stipulation was filed and an order entered extending  
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
12 No. 1729].

13      8. On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15      9. Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan")  
16 [Docket No. 1799] provides the following deadlines for objections to Claims:

17           (A) for any and all Claims and Equity Interests to which the  
18 General Bar Date applies, ninety (90) days after the Effective Date; (B) for  
19 any and all Claims to which the Administrative Claims Bar Date or the  
20 Professionals Administrative Bar Date applies, thirty (30) days after the  
expiration of the respective Bar Date; and (C) for any and all Claims to  
21 which the Bar Date applicable under section B.3 of Art. V of the Plan  
applies, thirty (30) days after the expiration of that Bar Date.

22      10. USACM's claims and noticing agent received approximately 2,436 proofs of  
23 claim as of the January 13, 2007 Bar Date, asserting claims totaling more than  
24 \$997,000,000, plus unknown amounts based on unliquidated Claims.

25      11. Under the Plan, the USACM Trust is the successor to USACM with respect  
26 to standing to seek allowance and disallowance of Claims.

LEWIS  
ANDROCA  
LLP

LAWYERS

1       12. The USACM Trust exists as of the Effective Date of the Plan, which was  
2 March 12, 2007. Geoffrey L. Berman is the Trustee.

3       13. Exhibit A contains a list of Claims against USACM filed by various parties,  
4 most of whom are Direct Lenders, asserting that their Claims are secured or partially  
5 secured (the “Alleged Secured Claims”). There are about 1,594 claimants asserting  
6 \$296,164,454.95 in the aggregate in Claims.

7       14. It appears that most of the claimants asserting secured status are Direct  
8 Lenders who are under the misimpression that because their loan investments serviced by  
9 USACM were secured by collateral of the Borrowers, any Claim they might have asserted  
10 against USACM would also be secured. To the contrary, these Claims are not entitled to  
11 secured status and should be classified as general unsecured Claims. USACM has no  
12 property that serves as collateral for the Direct Lender loans serviced by USACM. Having  
13 reviewed lien searches and the books and records of USACM, neither USACM nor the  
14 USACM Trust believes that any of the holders of the Alleged Secured Claims were  
15 granted a security interest in any property of USACM, or that any such security interest  
16 was perfected under applicable law.

### 18                   III. APPLICABLE AUTHORITY

19       1. Under the Bankruptcy Code, any Claim for which a proof of claim has been  
20 filed will be allowed unless a party in interest objects. If a party in interest objects to the  
21 proof of claim, the Court, after notice and hearing, shall determine the amount of the  
22 Claim and shall allow the Claim except to the extent that the Claim is “unenforceable  
23 against the debtor . . . under any . . . applicable law for a reason other than because such  
24 claim is contingent or unmatured.” 11 U.S.C. § 502(b).

25       2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
26 § 502(a). This objection is timely under the confirmed Plan.

LEWIS  
ANDROCA  
LLP

LAWYERS

1       3.     A properly filed proof of claim is presumed valid under Bankruptcy Rule  
2 3001(f). However, once an objection to the proof of claim controverts the presumption,  
3 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
4 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
5 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff'd*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996). The ultimate  
6 burden of proof as to the validity of a proof of claim "remains at all times upon the  
7 claimant." *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
8 1039 (9<sup>th</sup> Cir. 2000).

9

#### 10           IV. OBJECTIONS TO CLAIMS

11       1.     As more particularly described herein, the USACM Trust seeks in this  
12 Objection to reclassify the Alleged Secured Claims as general unsecured Claims.

13       2.     These Claims may be the subject of multiple objections herein for any of the  
14 reasons stated in this Objection. These Claims may also be subject to prior or  
15 subsequently filed objections, and this objection is without prejudice to any other  
16 objection by any party in interest, including the USACM Trust.

17       3.     The USACM Trust reserves the right to further object to any and all Claims,  
18 whether or not the subject of this Objection, for allowance and/or distribution purposes on  
19 any other grounds. The USACM Trust further reserves the right to modify, supplement  
20 and/or amend this Objection as it pertains to any Claim or claimant herein.

21       4.     For the convenience of the parties, and pursuant to the Court's direction, the  
22 USACM Trust has broken down its objections to secured claims into groups of no more  
23 than 50 claimants each. Thus this objection is one of a series of many objections to  
24 Claims that assert fully or partially secured status.

25       5.     Exhibit A contains a partial list of the Alleged Secured Claims, filed by  
26 various parties, most of whom are Direct Lenders, asserting that their Claims are secured.

LEWIS  
ANDROCA  
LLP

LAWYERS

1 The USACM Trust objects to these claims on the basis that these Claims are not secured  
 2 by property of the USACM estate, although they may well be secured by property owned  
 3 by their Borrowers. Secured claims are claims “by creditors against the estate that are  
 4 secured by a lien on property in which the estate has an interest.” *United States v. Ron*  
 5 *Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). None of the Claims listed on **Exhibit A** are  
 6 secured by such a lien, and the claimants have offered no evidence in support of their  
 7 contention. Thus none of these claims are entitled to secured status in this bankruptcy  
 8 case, and should be classified as general unsecured Claims, subject to further objection.  
 9

10 **V. CONCLUSION**

11 For the reasons discussed above, the USACM Trust objects to the secured status  
 12 asserted in the proofs of claim listed on **Exhibit A** attached to this Objection and requests  
 13 that the Court reclassify these claims as general unsecured Claims (albeit subject to  
 14 possible additional objections). The USACM Trust also requests such other and further  
 15 relief as is just and proper.

16 Dated: March 20, 2007.

17 **LEWIS AND ROCA LLP**

19 By: /s/ RC (#6593)

20 Susan M. Freeman, AZ 4199 (*pro hac vice*)  
 21 Rob Charles, NV 6593

22 3993 Howard Hughes Parkway, Suite 600  
 23 Las Vegas, Nevada 89169-5996  
 24 Facsimile (702) 949-8321  
 Telephone (702) 949-8320  
 Email: RCharles@LRLaw.com  
*Counsel for USACM Liquidating Trust*